

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KATHY LASKY,

Charging Party,

-v-

BUTTE-SILVER BOW COUNTY
SHERIFF'S OFFICE,

Respondent.

Case No.: 0031010430

ORDER AFFIRMING
FINAL AGENCY DECISION

On November 18, 2005, the Department of Labor and Industry's Hearings Bureau issued a Final Agency Decision in the above-entitled matter. Charging Party, Kathy Lasky, submitted objections and requested oral argument. The Commission considered the matter on March 20, 2006. Joan Jonkel appeared on behalf of Charging Party, Kathy Lasky (Lasky). Thomas Welsch appeared on behalf of Respondent, Butte-Silver Bow Sheriff's Office (BSB).

At the hearing before the Commission, Lasky argued that she was deprived of due process because the Respondent filed a transcript of the proceedings with the Hearings Officer without providing her notice of this filing. She argued that this constituted an ex parte communication between the Hearings Officer and Respondent, in violation of Section 2-4-613 MCA, and a violation of Montana Rule of Civil Procedure 5(a) because she was not served with a copy of the transcript. Lasky also asserted that her due process rights were denied because the Hearings Officer erroneously inserted in the Pretrial Order her Contentions, Conclusions of Law, Relief Sought from her Appearance and Preliminary Statement of October 24, 2004, instead of the corrected Contentions, Witness and Exhibit Lists of October 26, 2004. Lasky also asserted as

error of law that the Hearings Officer failed to correctly apply Admin. R. Mont. 24.9.603(3), which mandates a disputable presumption of retaliatory motive when significant adverse actions is taken against a complainant while a human rights complaint is pending. She argued that, to prevail, Respondent was required to overcome this presumption by a preponderance of the evidence, per Montana Rule of Evidence 301 and Admin R. Mont. 24.9.610(5). Finally, she argued that several of the Findings of Fact were not supported by the evidence.

In response, BSB contended that Lasky was not prejudiced by not receiving a copy of the transcript when it was provided to the Department of Labor and Industry. She had the tapes of the proceeding, which constituted the official record. More importantly, BSB argued, Lasky has not alleged any error in the transcript that prejudiced her; to the contrary, she adopted the transcript as her own for appeal purposes. BSB then asserted that Lasky was not prejudiced by any alleged error in the Pretrial Order because she was not precluded from presenting any evidence that BSB violated the Governmental Code of Fair Practices. Further, the Hearings Officer specifically found that to the extent that Lasky's Governmental Code of Fair Practices claim was distinct from her Human Rights Act claims, she waived the claim by failing to offer proof in support of the claim and failing to argue the claim during the hearing or in her closing brief. BSB cited and quoted large portions of the Final Agency Decision to support its argument that the Hearings Officer was in the best position to judge credibility and ascertain the facts. BSB argued that the Hearings Officer's Findings of Fact were supported by substantial, competent evidence, and the Conclusions of Law were accurate. In short, BSB argued, Lasky failed to prove discrimination based on sex or retaliation against her for engaging in protected activity, and the disciplinary actions against her were warranted due to her insubordination.

In discussion and after questioning counsel, the Commission noted that a review of the transcripts indicated that the disciplinary measures meted out to Lasky appeared to be proportionate to the seriousness and frequency of her misconduct. The Commission also determined that Lasky was not prejudiced by not initially having a copy of the Transcript prepared at Respondent's direction. To the contrary, she saved money by obtaining a copy of that transcript and not preparing her own. Additionally, she had the hearing tapes available to her. After careful and due consideration, the Commission concludes that the Final Agency Decision in this matter is supported by substantial evidence and complies with the essential requirements of the law. *Admin. R. Mont. 24.9.1717(2)*.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office. *See Mont. Code Ann. § 2-4-702*.

IT IS HEREBY ORDERED that Charging Party's objections are overruled. The Commission **affirms** and adopts the Final Agency Decision issued by the Hearings Bureau.

DATED this ____ day of March 2006

Chair Franke Wilmer

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of March, 2006.

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